

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

JAMES DARRIN,

Plaintiff,

Case No. 3:12-cv-349

-vs-

District Judge Timothy S. Black
Magistrate Judge Michael R. Merz

JACOB J. LEW,

Defendant.

REPORT AND RECOMMENDATIONS

This case is before the Court on Motion of Defendant to Dismiss for lack of service of process (Doc. No. 7). Defendant Secretary of the Treasury represents to the Court that Plaintiff has not made service of process as required by Fed. R. Civ. P. 4 in that neither the Attorney General of the United States nor the United States Attorney for the Southern District of Ohio was served with process within 120 days of the filing of the Complaint, the time allowed by Fed. R. Civ. P. 4(m).

Plaintiff, who is proceeding *pro se* in this case, was notified by the Court that his response to the Motion was required to be filed not later than April 11, 2013 (Doc. No. 8). Without any extension of time to do so, Plaintiff filed a response on April 15, 2013, which consists of endorsing "Refusal for Cause" across a copy of the Motion (Doc. No. 9).

The docket reflects that the Complaint was filed October 18, 2012 (Doc. No. 1). On November 5, 2012, the Court *sua sponte* advised Plaintiff of his obligation to make service of process by February 14, 2013 (Doc. No. 3). Thereafter Plaintiff caused the issuance of process

as to original Defendant Timothy Geithner¹ and its service on Mr. Geithner by an independent process server, Andre S. Powell. The Affidavit of Service filed by Mr. Powell shows service on the Secretary of the Treasury by delivery to Mail Room Clerk Reginald Alson on January 16, 2013 (Doc. No. 5). No other process has been issued by the Clerk and there is no other proof of service.

Fed. R. Civ. P. 4(i) prescribes in detail what must be done to serve an officer of the United States. Plaintiff plainly has not complied with the Rule. Furthermore, his Response is untimely and does not respond to the substance of the Motion.

Accordingly, it is respectfully recommended that the Complaint herein be dismissed without prejudice for lack of service of process.

April 15, 2013.

s/ *Michael R. Merz*
United States Magistrate Judge

NOTICE REGARDING OBJECTIONS

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within fourteen days after being served with this Report and Recommendations. Pursuant to Fed. R. Civ. P. 6(d), this period is extended to seventeen days because this Report is being served by one of the methods of service listed in Fed. R. Civ. P. 5(b)(2)(C), (D), (E), or (F). Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendations are based in whole or in part upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections within fourteen days after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. See *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140 (1985).

¹ The Court *sua sponte* substituted Jacob Lew for Timothy Geithner when Mr. Lew succeeded Mr. Geithner as Secretary of the Treasury.